

FLORIDA TOMATO EXCHANGE

"A Nonprofit Agricultural Cooperative Association"

April 7, 2003

Via Facsimile (202) 720-3499 – 5 pages

E-mail cool@usda.gov

Country of Origin Labeling Program
Agricultural Marketing Service, USDA
Stop 0249, Room 2092-S
1400 Independence Avenue, SW
Washington, DC 20250-0249

Re: Federal Register Notice, 67 Fed. Reg. 63367-63375, Oct. 11, 2002, Docket No. LS-02-13, Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Agreement Act of 1946.

Sir:

The Florida Tomato Exchange has been working on country of origin labeling for fruits and vegetables since the 1970's. We support the law as written. It requires the retailers to identify clearly the fruits and vegetables with their country of origin and the retailer's immediate supplier to provide the retailer with information concerning the country of origin. We believe the proposed guidelines go way beyond the law and its intent. We hope the Department will reconsider its proposal, listen to the industries and consumers, and amend the guidelines accordingly.

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Our growers produce a substantial majority of the tomatoes grown in the United States during the winter months. Our main competition comes from Mexico and we are constantly aware of our competitive position in the U.S. market vis-à-vis Mexican imports. Because this is such a sensitive issue, we have been keenly interested in making sure that the playing field is level. Labeling imported tomatoes or their containers, we believe is important because it gives consumers a choice between U.S. grown tomatoes and imported tomatoes. That is why we supported country of origin labeling in Florida which was enacted in 1979. That law was implemented by the state and it has worked well because it was kept simple and not enforced as if it was a food safety emergency as is envisioned in the Guidelines. Congress passed a simple straight-forward law and its implementing regulations must be kept simple as well.

First and foremost we strongly believe that there should be separate rules for perishable agricultural commodities. We are working with these groups on a substitute package of regulations for fruits and vegetables and we hope the Department will give serious consideration to our substitute proposal. If other covered commodities think the same way regarding their commodities, then we urge those recommendations be followed as well. For perishable agricultural commodities there are many separate and distinct marketing orders that permit each commodity to market its product in a way that it is determined to be best. So to with regard these regulations, for perishable agricultural commodities, there needs to be separate regulations that cover these commodities. There are many reasons for taking this approach. As noted above, the Department already makes distinctions between perishable commodities and between perishable commodities and other commodities. In addition, the law itself and its history in the House makes it clear that perishable agricultural commodities (fruits and vegetables) should be defined

and enforced under the Perishable Agricultural Commodities Act (PACA). And, more fundamentally, the perishable agricultural commodities industry is clearly distinct from other covered commodities. Production, distribution, processing, transportation, and even record keeping systems are all different than those for other commodities.

Accordingly, the present Guidelines that adopts a single standard for all covered commodities is neither warranted nor justified. In the case of fruits and vegetables, separate regulations adopting the rules of the Perishable Agricultural Commodities and its regulations is more than adequate to meet the requirements of the labeling law. We strongly recommend that the Department adopt regulations that fit this existing system of regulation of the perishable agricultural industry. Using a system already in place requires minimal change and minimal disruption to a system that require retention of documents and an automatic audit trail of the commodity from port of entry and domestic shipper to the retail outlet.

We also recommend that labeling at the retail level be simple, clear and efficient. Any sticker, tag, placard or other method of identification that provides the country of origin of the commodity should suffice. Further, with regard to mixed or blended fruits and vegetables, for the purposes of labeling, we strongly recommend that all countries of origin of the produce be identified. To require anything more is to exceed the mandate of the law. However, we do believe, the law requires that commodities from different countries must be segregated at all times.

In addition to our call for regulations that pertain only to fruits and vegetables, we note that for record keeping purposes this means that no record keeping requirements should be required of the industry beyond what the PACA requires. The Department knows exactly what documents are required to be kept under PACA and that these documents must be kept for two years after each transaction. All persons in the chain of sales of fruits and vegetables must and do keep records of each transaction. Such documentation already in existence is sufficient to meet the requirements of the law. That is no need and no justification for going beyond what is required pursuant to PACA.

Lastly, it is important to note that the law requires the supplier to the retailer to provide the retailer with information indicating the country of origin of the product. The law was written in such a way that the only clear way of reading it is that the supplier referred to in the law is the immediate supplier to the retailer. There is no one, no other supplier, who provides the product to the retailer. Thus, this last supplier to the retailer has the obligation under the law to provide country of origin labeling information to the retailer. This supplier, and all other suppliers, is not required by the law to maintain records concerning country of origin labeling. All that is required is for the immediate supplier to the retailer to provide country of origin information (not maintain records) to the retailer. And, the only “punishment” provided by the law is on the retailer. The law does not penalize the immediate supplier to the retailer for not providing country of origin labeling information to the retailer or for providing incorrect labeling information to the retailer. And, there is no penalty provided in the law for the immediate supplier to the retailer or any supplier to maintain records on the country of origin. Notwithstanding the foregoing, if the Department determines that it is necessary to require record keeping, as we have stated above, we believe this situation can be fairly and adequately addressed

by adoption of the PACA record keeping requirements for fruits and vegetables. As for passing on the country of origin information, suppliers should be required only to pass on labeling information by any means available, such as putting this information on the carton, the bill of lading, shipping manifest, or other document of electronic communication. Once that is done, then the PACA takes over and the information provided must be accurate. Again, because of PACA and its regulation of the entire industry, it is critical that Department adopt regulations specifically tailored to the fruit and vegetable industry.

The Florida Tomato Exchange has a long history in the struggle to get a country of origin labeling bill passed. It is now the law of the land and it needs to be implemented properly and efficiently. We believe the best way to do that for fruits and vegetables is for the Department to promulgate separate country of origin labeling regulations for fruits and vegetables and to allow great flexibility for suppliers and for retailers in how each is to comply with the law. We will join with others in the industry in submitting proposed regulations for the fruit and vegetable industry and are designed to comply with the letter and the spirit of the country of origin law.

We trust you will agree and we look forward to further addressing these issues at one or more of the listening sessions recently announced by the Secretary.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Reginald L. Brown', written in a cursive style.

Reginald L. Brown

cc: Florida Congressional Delegation
FTE Board of Directors